

PHILIPPINE GUARDIANS BROTHERHOOD, INC., REPRESENTED BY ITS SECRETARY-GENERAL GEORGE “FGBF GEORGE” DULDULAO, PETITIONER, VS. COMMISSION ON ELECTIONS, RESPONDENT.

G.R. No. 190529. March 22, 2011

Ponente: BRION, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-190529/>

BRION, J.:

We resolve in this Resolution all the pending incidents in this case, specifically:

- (a) the contempt charge[1] against the respondent Commission on Elections (Comelec) for its alleged disobedience to this Court's Status Quo Order[2] dated February 2, 2010; and
- (b) the issue of whether the petitioner, Philippine Guardians Brotherhood, Inc. (PGBI), should be declared to have participated in the party-list elections of May 10, 2010, in light of the Comelec's failure to obey our Status Quo Order and our subsequent Resolution[3] granting PGBI's petition to annul its delisting from the roster of accredited party-list groups or organizations.[4]

FACTUAL ANTECEDENTS

These incidents arose from our Status Quo Order directing the Comelec to restore and maintain the PGBI to its situation prior to the issuance of Comelec Resolution No. 8679, pending the resolution of the petition for certiorari that PGBI filed to challenge this Comelec Resolution. Our Status Quo Order, in short, directly ordered the Comelec to include PGBI in the list of candidates under the party-list system in the May 10, 2010 elections pending the final determination of PGBI's qualification to be voted upon as a party-list organization.

We issued the Status Quo Order on February 2, 2010. It was served on the Comelec on the same date,[5] i.e., within the period that the Comelec itself gave for the correction of any error or omission in its published official list of party-list participants in the May 10, 2010 elections. The Comelec itself declared:

On January 30, 2010 at 3:00 o'clock (sic) in the afternoon, pursuant to Comelec Minute Resolution No. 10-0042 dated January 19, 2010, the Information Technology Department of Comelec published a list of candidates with the instruction that "(s)hould there be any misspelling, omission or other errors, the concerned candidate must call the Law Department's attention within five (5) days from this publication for the purpose of correction. Thereafter, Comelec shall be relieved from liability"[6] and the final list shall then be prepared for printing.[7]

The Comelec responded the next day (February 3, 2010) to our Status Quo Order by asking for its reconsideration and/or recall, based on the following grounds/arguments:

- 1) There will be insurmountable and tremendous operational constraints and costs implications in complying with the status quo order.

2) To add the petitioner's party/acronym in the database of the List of Candidates for sectoral party/organization or coalition participating in the party-list system of representation will have a critical impact on the already tight and overstretched election timelines of the Commission. Copy of the Revised Automation Implementation Calendar is hereto attached as Annex "1".

3) Printing of the ballots is an intricate and complicated process. It is not a simple process of encoding data in a computer and printing the ballots using a printer attached to the computer.

4) Prior to the printing of the ballots, several technical and mechanical preparatory activities have to be done which include among other things:

- a. Generation and back-up of database containing the candidates['] information;
- b. Configuration of Precinct Count Optical Scan (PCOS) machines and Consolidation and Canvassing System (CCS);
- c. Creation and design of one thousand six hundred seventy-four (1,674) ballot templates;
- d. Production of the ballot templates;
- e. Verification of each and every ballot template to ensure that it contains the accurate names of candidates for the national positions and acronyms of sectoral party/organization or coalition participating in the party-list system of representation and their corresponding assignments to the correct districts, provinces, municipalities/cities, and clustered precincts. Since the ballots are precinct-specific to ensure the security of the voting and counting, this means verification of seventy six thousand three hundred forty (76,340) variations of the one thousand six hundred seventy-four (1,674) ballot templates; and
- f. Placing several security markings in the ballots.

5) In fact, the installation of the Election Management System, which is used to generate the PCOS machines configuration and ballot templates production have already been in place as of January 25, 2010.

6) To comply with the status quo order will not only affect the printing of the ballots but also have serious implications on other activities of the Commission, such as:

- The setting of configuration of the PCOS and CCS machines;
- Testing of PCOS machines in their actual configuration with the ballots;
- Deployment of PCOS and CCS machines and transmission equipments;
- Checking/testing, demos, and sealing of the PCOS and CCS machines; and
- Shipment of the ballots to all parts of the country.

7) Due to several re-scheduling of the timelines of the Commission, Smartmatic-TIM cautioned that it is extremely risky to change the database containing the candidates' information at this point in time. Any change in the database and other preparatory activities would mean:

- Twelve thousand (12,000) PCOS might not be configured and dispatched to the field on time; and
- Four million eight hundred thousand (4,800,000) ballots might not be printed before the deadline and shipped out on time.

Even if the Commission will resort to contingency measures to configure and ship out the twelve thousand (12,000) PCOS machines on time, the printing of the ballots cannot be completed before May 10, 2010. This means that four million eight hundred thousand (4,800,000) voters might not be able to vote due to lack of

ballots, thus disenfranchising them.

xxx xxx xxx

10) Hence, the Commission fervently requests the understanding and forbearance of the Honorable Court which is the bastion of our justice system, protector of the democratic processes and our last resort in ensuring a clean, peaceful, orderly and credible May 10, 2010 elections, to take a second look on the status quo order issued on February 2, 2010.[8]

In its Comment to Comelec's Motion for Reconsideration with Manifestation,[9] PGBI essentially alleged that the Comelec posited seemingly misleading and innocuous reasons in seeking reconsideration. Among other arguments, it claimed that the Comelec had been less than candid in its submissions: first, compliance with the Status Quo Order at that point would not disrupt the timetable or entail additional and costly expenditures given that the Comelec had yet to terminate all related activities and preparations for the May 10, 2010 elections;[10] second, the Comelec had yet to promulgate, on February 11, 2010, its decisions on several pending disqualification cases and recently accredited six other party-list organizations to add to the more than 154 previously accredited sectoral parties and/or organizations. PGBI also manifested that the ballot template that the Comelec published in its website on February 8, 2010 did not include the name or acronym of PGBI, in contravention of the Status Quo Order; and third, the Comelec's blatant disregard of the Status Quo Order reeked of official arrogance, given this Court's determination that it should be included in the ballot pending resolution of PGBI's petition for certiorari.[11]

In our Resolution of April 29, 2010,[12] we granted PGBI's petition and, accordingly, annulled the assailed Comelec Resolutions in SPP No. 09-004 (MP)[13] which delisted PGBI from the roster of duly registered national, regional and sectoral parties, organizations or coalitions. We declared at the same time that PGBI is qualified to be voted upon as a party-list group or organization in the May 10, 2010 elections. Despite the Status Quo Order and the Resolution, however, PGBI was never included in the ballot as one of the accredited party-list groups or organizations eligible for election under the party-list system. Hence, PGBI was never voted upon as a party-list candidate in the May 10, 2010 elections.

Before the elections or on April 28, 2010, PGBI filed a Manifestation (of Continuing Objection to Comelec's Defiance of the Order of the Honorable Supreme Court).[14] It claimed that Comelec Resolution No. 8815, dated April 5, 2007, excluded the nominees of PGBI in the official list of party-list/coalitions/sectoral organizations participating in the May 10, 2010 Automated National and Local Elections. Acting on this Manifestation, we required the Comelec, via our Resolution of May 7, 2010, to explain and show cause, within a non-extendible period of ten (10) days from receipt of the Resolution, why it should not be held in CONTEMPT of COURT for its alleged defiance of our Status Quo Order.[15]

In its Compliance[16] to the Show Cause Order (submitted on May 21, 2010), the Comelec reiterated the arguments it raised in its Extreme Urgent Motion for Reconsideration and To Lift Status Quo Order. Specifically, it reiterated that there were "insurmountable and tremendous operational constraints and cost implications in complying with the status quo order," which order (referring to the Status Quo Order) is tantamount to technical, legal, and physical impossibility for respondents to comply.[17] The Comelec asked the Court to note the explanation and accept it as sufficient compliance with the Show Cause Order.

Required to comment on the Comelec's Compliance, PGBI filed a Manifestation Cum Comment,[18] asserting that a careful reading of the Compliance reveals that the Comelec simply deftly skirted and, ultimately, never obeyed the Status Quo Order, and thus wantonly and contumaciously disregarded the same. The PGBI additionally manifested that via a letter to the Comelec on May 4, 2010, it raised the following concerns:

The preceding pronouncement [referring to the Court's Resolution granting PGBI's petition] may appear to be inconsequential and a pyrrhic victory in view of the error and omission to include the name of the petitioner in the ballots for the scheduled elections. How this Honorable Commission will find the means and/or alternative to comply with and/or implement the directive in said decision is a matter left to its judgment and discretion.

Be that as it may, it is the petitioner's considered view that a definitive ruling, including the grant of its Motion for Reconsideration in SPP No. 09-004 (MP), be expressly made in order that the limitation prescribed in Section 6(8) of R.A. No. 7941, replicated in COMELEC Resolution No. 2847, promulgated on June 25, 1996, will not apply to herein petitioner for purposes of the May 2013 elections.

While the implementation of the dispositions in the said Resolution has become a physical impossibility, it is petitioner's respectful submittal that it should not be penalized for not being able to participate in the coming May 10, 2010 party-list election. [parenthetical note at 1[st] paragraph supplied; underscoring in the original].

Based on its apprehension that it might end up twice in jeopardy of not being able to participate in the party-list elections of 2013 in view of Section 6(8) of Republic Act (R.A.) No. 7941, PGBI requested that the matter of its participation in the May 2013 party-list elections be given a categorical ruling.[19]

In its Reply,[20] the Comelec asserted that a discussion on PGBI's eligibility for the 2013 elections - i.e., whether its declared eligibility for the 2010 elections and its eventual inability to participate thereto should be considered as a failure to participate in the last two (2) elections, as defined in R.A. No. 7941 - is purely academic, and is purely an advisory opinion that this Court has no jurisdiction to grant. Judicial power, the Comelec claimed, is limited to the determination and resolution of actual cases and controversies involving existing conflicts that are appropriate or ripe for judicial determination; it does not extend to hypothetical, conjectural or anticipatory questions. It claimed additionally that as the specialized constitutional body charged with the enforcement and administration of all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum and recall, PGBI's question is a matter within its competence and primary jurisdiction to decide once it becomes ripe for adjudication.

OUR RULING

After due consideration of the attendant facts and the law, we find the Comelec guilty of indirect contempt of this Court.

The Comelec Chair and Members are
guilty of indirect contempt of Court

We explained in *Ang Bagong Bayani-OFW Labor Party v. COMELEC*[21] the Court's contempt power as follows:

The power to punish contempt is inherent in all courts, because it is essential to the preservation of order in judicial proceedings, and to the enforcement of judgments, orders and mandates of the courts; and, consequently, to the due administration of justice.

Under our Rules of Court, contempt is classified into direct and indirect. Direct contempt, which may be summary, is committed "in the presence of or so near a court as to obstruct or interrupt the proceedings before the same, including disrespect toward the court, offensive personalities toward others, or refusal to be sworn or to answer as a witness, or to subscribe an affidavit or deposition when lawfully required to do so."

Indirect contempt, on the other hand, is not committed in the presence of the court and can be punished only after notice and hearing. Disobedience or resistance to a lawful writ, process, order or judgment of a court or injunction granted by a court or judge constitutes indirect contempt. We quote Section 3, Rule 71 of the Rules

of Court, enumerating the acts punishable as indirect contempt, as follows:

"SEC. 3. Indirect contempt to be punished after charge and hearing. -- After a charge in writing has been filed, and an opportunity given to the respondent to comment thereon within such period as may be fixed by the court and to be heard by himself or counsel, a person guilty of any of the following acts may be punished for indirect contempt:

- (a) Misbehavior of an officer of a court in the performance of his official duties or in his official transactions;
- (b) Disobedience of or resistance to a lawful writ, process, order, or judgment of a court, including the act of a person who, after being dispossessed or ejected from any real property by the judgment or process of any court of competent jurisdiction, enters or attempts or induces another to enter into or upon such real property, for the purpose of executing acts of ownership or possession, or in any manner disturbs the possession given to the person adjudged to be entitled thereto;
- (c) Any abuse of or any unlawful interference with the processes or proceedings of a court not constituting direct contempt under section 1 of this Rule;
- (d) Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice;
- (e) Assuming to be an attorney or an officer of a court, and acting as such without authority;
- (f) Failure to obey a subpoena duly served;
- (g) The rescue, or attempted rescue, of a person or property in the custody of an officer by virtue of an order or process of a court held by him.

But nothing in this section shall be so construed as to prevent the court from issuing process to bring the respondent into court, or from holding him in custody pending such proceedings."

Based on the recited antecedent facts, it cannot be disputed that the Comelec did not comply with our Status Quo Order; it simply pleaded insurmountable and tremendous operational constraints and costs implications as reasons for its avoidance of our Order. It essentially posited that compliance with our Status Quo Order was rendered impossible by the automation of the May 10, 2010 elections.

However, we find this explanation unacceptable, given the Comelec's own self-imposed deadline of February 4, 2010 for the correction of errors and omissions, prior to printing, of the published list of participating party-list groups and organizations in the May 10, 2010 elections.

The Comelec deadline could only mean that the Comelec had determined that changes in the official ballot could still be made at any time prior to the deadline. In the context of the cases then pending involving the registration of party-list organizations, the deadline was a clear signal from the Comelec that the cases would have to be resolved before the deadline; otherwise, the Comelec could not be held liable for their non-inclusion.

We fully read and respected the Comelec's signal, fully aware that we have to balance the interests the Comelec has to protect, with PGBI's intent to be voted as a party-list organization. Thus, on February 2, 2010, we issued our Status Quo Order after a preliminary but judicious evaluation of the merits of PGBI's motion for reconsideration, only to receive the Comelec's response on February 3, 2010 manifesting that it could no longer change the ballots because of the nature of an automated election.

In an exercise as important as an election, the Comelec cannot make a declaration and impose a deadline, and, thereafter, expect everyone to accept its excuses when it backtracks on its announced declaration. The Comelec knew very well that there were still cases pending for judicial determination that could have been decided before

the deadline was set.

Although the recent case of *Liberal Party v. Commission on Elections*,^[22] involved the registration of political parties, we found that the Comelec gravely abused its discretion in allowing the out of time registration of the NP-NPC coalition despite the mandatory deadline the Comelec itself had set. In this case, we underscored the significance of the Comelec's compliance with its self-imposed deadlines, particularly in the implementation of the first-ever automated elections of May 10, 2010.

To be excused, the Comelec needed more than its generalized descriptions of the process of ballot printing and the alleged problems it faced. We needed reasons on how and why the deadline was set, as well as detailed and specific reasons why PGBI could no longer be listed while other errors and omissions could still be remedied.

Unfortunately for the Comelec, we did not see that kind of justification in its Compliance before us. Like the Comelec, we expect obedience to and respect for our Orders and Resolutions, and we cannot be sidetracked based solely on supposed operational constraints caused by the automated polls. Its treatment of our Status Quo Order simply meant that even before the Comelec deadline, a definitive ruling that a party-list organization should be included in the list to be voted upon would have been for naught as the Comelec would have anyway pleaded automation constraints. Even if its excuse had been meritorious, the Comelec effectively would have been guilty of misrepresentation on an election matter and in dealing with this Court.

Although we have recognized the validity of the automation of the May 10, 2010 elections in *Roque, Jr. v. Comelec*,^[23] we stress that automation is not the end-all and be-all of an electoral process. An equally important aspect of a democratic electoral exercise is the right of free choice of the electorates on who shall govern them; the party-list system, in the words of *Ang Bagong Bayani-OFW Labor Party v. Comelec*,^[24] affords them this choice, as it gives the marginalized and underrepresented sectors the opportunity to participate in governance. Wittingly or unwittingly, the Comelec took this freedom of choice away and effectively disenfranchised the members of the sector that PGBI sought to represent when it did not include PGBI in the list of qualified parties vying for a seat under the party-list system of representation. This is a consideration no less weighty than the automation of the election and cannot be simply disregarded on mere generalized allegations of automation difficulties.

The Appropriate Penalty

Section 7, Rule 71 of the Rules of Court provides the penalty for indirect contempt. Section 7 of Rule 71 reads:

SEC. 7. Punishment for indirect contempt.- If the respondent is adjudged guilty of indirect contempt committed against a Regional Trial Court or a court of equivalent or higher rank, he may be punished by a fine not exceeding thirty thousand pesos or imprisonment not exceeding six (6) months, or both.xxx

In the past, we have found the Chairman and members of the Comelec guilty of indirect contempt in *Ang Bagong Bayani-OFW Labor Party v. COMELEC*.^[25] In that case, we held that the Chairman and members of the COMELEC guilty of contempt and required them to pay a fine in the amount of P20, 000.00 for "degrading the dignity of th[e] Court;^[26] for brazen disobedience to its lawful directives, in particular its Temporary Restraining Order dated May 9, 2001; and for delaying the ultimate resolution of the many incidents of the case, to the prejudice of the litigants and of the country." We also warned the Comelec that a repetition of the same or similar acts shall be dealt with more severely in the future.^[27]

Evidently, the Rule cited above does not provide that reprimand may be imposed on one found guilty of indirect contempt. However, we have in recent cases imposed a penalty less than what is provided under the Rules if the circumstances merit such.^[28]

In *Alcantara v. Ponce*,^[29] the Court, instead of citing the respondent Atty. Escareal-Sandejas for contempt, chose to reprimand her (and warned her that her commission of the same act would be more drastically dealt with) noting her apparent inexperience in practice of the profession, especially in appellate proceedings before the Court. Similarly, in *Racines v. Judge Morallos*,^[30] the Court, after finding Jaime Racines guilty of indirect contempt, merely reprimanded him because "he is not learned in the intricacies of the law."

In the present case, special circumstances exist which call for our leniency and compel us to impose the penalty of severe reprimand instead of imprisonment and/or fine under Section 7, of Rule 71 of the Rules of Court as we have ruled in *Ang Bagong Bayani-OFW Labor Party*. We emphasize that although automation is a special circumstance that should be considered in the present incidental matter, however, its effect on the Comelec's non-compliance is merely to mitigate, not to totally exculpate, the Comelec from liability for its failure to comply with our Status Quo Order. In other words, even if we grant that automation might have posed some difficulty in including a new party in the party-list listing, the Comelec still failed to prove to our satisfaction that the PGBI's inclusion was technically impossible and could not have been done even if the Comelec had wanted to. Thus, at the most, we can give the Comelec the benefit of the doubt to the extent of recognizing its excuse as a mitigating factor.

Therefore, instead of imposing the penalty of imprisonment and/or fine provided under Section 7, Rule 71 of the Revised Rules of Court, we deem it proper to impose upon the Comelec, particularly on its Chair and Members the penalty of severe reprimand, with a stern warning that a repetition of the same offense shall be dealt with more severely.

At this juncture, we take judicial notice of Comelec Chairperson Jose A.R. Melo's resignation effective January 15, 2011^[31] and Commissioners Nicodemo T. Ferrer and Gregorio Y. Larrazabal's retirement on February 2, 2011.^[32] We hasten to clarify that their departure from government service, however, do not render moot and academic their liability for indirect contempt, since "contempt of court applies to all persons, whether in or out of government." Thus, in *Curata v. Philippine Ports Authority*,^[33] we held:

Contempt of court applies to all persons, whether in or out of government. Thus, it covers government officials or employees who retired during the pendency of the petition for contempt. Otherwise, a civil servant may strategize to avail himself of an early retirement to escape the sanctions from a contempt citation, if he perceives that he would be made responsible for a contumacious act. The higher interest of effective and efficient administration of justice dictates that a petition for contempt must proceed to its final conclusion despite the retirement of the government official or employee, more so if it involves a former member of the bench.

PGBI's Participation in the May 10, 2010 Party-List Elections

We partly agree with the Comelec that we cannot recognize PGBI to be a party-list organization fully qualified to run under the party-list system in the coming 2013 party-list elections. The question of full and total qualification is not ripe for judicial determination as this is not before us for resolution. Participation in a previous election and the level of votes in favor of a participating organization are not the only qualification issues that can arise in a party-list election, and we cannot assume that PGBI shall meet all other legal standards to qualify as a party-list organization in the 2013 elections.^[34]

But separate from the question of PGBI's overall qualification is the narrower question of its participation in the May 10, 2010 elections - an issue that is subsumed by the issues in the main certiorari case. As shown above, PGBI intended to participate in the May 10, 2010 elections but it was not able to do so because the Comelec did

not - contrary to our express directive - include it in the list of party-list organizations to be voted upon in the May 10, 2010 elections. As it was the Comelec itself which prevented PGBI from participating in the May 10, 2010 party-list elections when it deleted PGBI, with grave abuse of discretion, from the list of accredited party-list groups or organizations and, thereafter, refused to return it to the list despite our directive, PGBI should, at the very least, be deemed to have participated in the May 10, 2010 elections, and cannot be disqualified for non-participation or for failure to garner the votes required under Section 6(8) of R.A. No. 7941. To conclude otherwise is to effectively recognize the ineffectiveness of our Status Quo Order, of our April 29, 2010 Decision, and of this Court.

As a final note, the subject of the Court's action is the COMELEC's disobedience to our Status Quo Order of February 2, 2010 in the case in caption. The composition of the COMELEC has since then changed. We therefore clarify that this Resolution affects and reflects on the COMELEC and its membership as then constituted as they were the ones directly responsible for the disobedience.

WHEREFORE, premises considered, the Comelec Chair[35] and Members[36] are hereby found GUILTY of CONTEMPT of the Supreme Court for their disobedience to our lawful directive, specifically the Status Quo Order dated February 2, 2010. They are accordingly SEVERELY REPRIMANDED for this disobedience. They are further WARNED that a repetition of the same or similar acts shall be dealt with more severely in the future.

The Philippine Guardians Brotherhood, Inc. shall be deemed not to have transgressed the participation and level of votes requirements under Section 6(8) of Republic Act No. 7941 with respect to the May 10, 2010 elections.

SO ORDERED.

Corona, C.J., Carpio, Carpio Morales, Nachura, Peralta, Bersamin, Del Castillo, and Villarama, Jr., JJ., concur. Velasco, Leonardo-De Castro, and Perez, JJ., joins dissent of J. Abad.

Abad, J., please see dissenting opinion.

Mendoza, J., on leave.

Sereno, J., I dissent and join J. Abad.

[1] Rollo, p. 186.

[2] Id. at 83.

[3] Dated April 29, 2010, id. at 161-172.

[4] PGBI Manifestation Cum Comment dated July 19, 2010, id. at 201-207.

[5] Id. at 88-B.

[6] Id. at 192-193. Significantly, the Comelec conveniently omitted the underlined phrases in its Compliance.

[7] See Annex "A" of PGBI's Manifestation (of Continuing Objection to Comelec's Defiance of the Order of the Honorable Supreme Court), id. at 181.

[8] Extremely Urgent Motion for Reconsideration and To Lift Status Quo Order filed by the Comelec on February 3, 2010, id. at 90-94.

[9] Id. at 112-126.

[10] Id. at 113.

[11] Id. at 115.

[12] Id. at 161-172.

[13] Regarding PGBI's motion for reconsideration of the Comelec Resolution (No. 8679 dated October 13, 2009) deleting it from the roster of accredited party-list groups or organizations.

[14] Rollo, pp. 177-183.

[15] Id. at 186-187.

[16] Id. at 194.

[17] See the Grounds for the Comelec's Motion for Reconsideration quoted at pp. 3-4 of this Resolution.

[18] Rollo, pp. 201-211.

[19] Id.

[20] Id. at 213-219.

[21] En banc Resolution in G.R. No. 147589 & G.R. No. 147613(Bayan Muna v. Commission on Elections, et al.), February 18, 2003.

[22] G.R. No. 191771, May 6, 2010.

[23] G.R. No. 188456, September 10, 2009, 599 SCRA 69.

[24] G.R. No. 147589, June 26, 2001, 359 SCRA 698.

[25] Supra note 21.

[26] Comelec Chairman Benjamin S. Abalos Sr., Commissioners Luzviminda G. Tancangco, Rufino S.B. Javier, Ralph C. Lantion and Mehol K. Sadain were each fined in the sum of P20,000.00 while Commissioners Resurreccion Z. Borra and Florentino A. Tuason Jr. were each fined P5,000.00. In the case of Commissioners Borra and Tuason, Jr., the Court noted that "the actions committed by both commissioners are less serious in degree when compared with those of their colleagues," thus "a lesser penalty [was] meted out to them," *ibid*.

[27] See *Jainal v. Commission on Elections*, G.R. No. 174551, March 7, 2007, 517 SCRA 799.

[28] In the Matter of the Contempt Orders Against Lt. Gen. Jose Calimlim and Atty. Domingo A. Doctor, Jr., G.R. No. 141668, August 20, 2008, 562 SCRA 393,401.

[29] G.R. No. 131547, December 15, 2005, 478 SCRA 27.

[30] A.M. No. MTJ-08-1698 (Formerly OCA I.P.I. No. 04-1523-MTJ), March 3, 2008, 547 SCRA 295.

[31] See Kimberly Jane T. Tan, Comelec Chief moves up resignation to Jan. 15, January 15, 2011, available at <http://www.gmanews.tv/story/210671/comelec-chief-moves-up-resignation-to-jan-15>, last visited February 14, 2011.

[32] See Riziel Ann A. Cabreros, 2 Comelec commissioners retire, February 1, 2011, available at <http://www.newsbreak.ph/2011/02/01/2-comelec-commissioners-retire/>, last visited February 21, 2011.

[33] G.R. Nos. 154211-12, June 22, 2009, 590 SCRA 214, 345.

[34] See for example the requirements of Sections 4, 5 and 6(1) to 6(7) of R.A. No. 7941. See also *Mariano, Jr. v.*

Comelec, G.R. No. 118577, March 7, 1995, 242 SCRA 211.

[35] Honorable Chairperson Jose A.R. Melo.

[36] Honorable Commissioners Rene V. Sarmiento, Nicodemo T. Ferrer, Lucenito N. Tagle, Armando C. Velasco, Elias R. Yusoph, and Gregorio Y. Larrazabal.

DISSENTING OPINION

ABAD, J.:

The majority would have the Court severely reprimand the Chairman and Members of the Commission on Elections (COMELEC) for failing to comply with the Court's order of February 2, 2010 that directed that body to maintain the status quo in the case of petitioner Philippine Guardians Brotherhood, Inc. (PGBI). The order meant placing its name in the list of registered and accredited party-list organizations vying for congressional seats in the May 10, 2010 elections pending adjudication of the case.

I am compelled to disagree with the majority since, in my view, the facts do not warrant such condemnation.

On October 13, 2009 the COMELEC issued Resolution 8679, deleting on various grounds the names of several party-list groups, including PGBI, from the list of registered parties, organizations or coalitions. This gave PGBI and the others with it ample opportunity to seek redress from this Court before the window for possible reinstatement was to be permanently shut out by the need to finalize such list in time for an electronic election.

In the case of *Ang Ladlad*,^[1] a party similarly excluded from the list, it filed its petition for certiorari with this Court on January 4, 2010. On January 12, 2010 the Court found sufficient reason to issue a temporary restraining order (TRO) against the COMELEC pending a decision of the case on its merits, which TRO effectively placed *Ang Ladlad* back into the COMELEC list. *Ang Ladlad* was thus voted for in the May 10 elections even when the Court had not yet decided the merits of its case.

Here, the PGBI filed its petition for certiorari with this Court on December 23, 2009. Unfortunately for it, the Court did not find merit in its petition and so dismissed the same on January 12, 2010 on the ground that the COMELEC committed no grave abuse of discretion in issuing its contested resolutions. Consequently, unlike *Ang Ladlad*, PGBI's name remained out of the list.

PGBI filed a supplement to its petition on January 15, 2010, with plea for the issuance of a TRO but the Court merely noted the same since it had already dismissed the main petition.

Four days later on January 19, 2010 the COMELEC issued Minute Resolution 10-0042 stating that it would be publishing the Certified List of Candidates for the May 10, 2010 national and local elections and that the candidates could seek correction of any "misspelling or omission of names of the candidates or an error in the entry of information" in the list within five days of the publication.

On January 25, 2010 (a Monday) PGBI filed its motion for reconsideration of the Court's January 12, 2010 resolution that dismissed its petition. It also asked anew for the issuance of a TRO.

Meantime, on January 30, 2010 the COMELEC published the certified final list of candidates for both local and national positions by posting it on its website, with the following statement: "Should there be misspelling, omission or other errors, the concerned candidate shall call the Law Department's attention within 5 days from this publication for the purpose of correction."^[2]

Also on January 30, 2010 the COMELEC submitted to Smartmatic-TIM, Inc. the data base the latter was to use for the configuration of the Precinct Count Optical Scan (PCOS) and Consolidation and Canvassing System (CCS) machines and the printing of the ballot template. The submission of this data base to Smartmatic-TIM was the irreversible point against any further attempt to insert in the list the names of other candidates or parties to be voted on in the national and local elections of May 10.

On February 2, 2010 (a Tuesday), acting on PGBI's motion for reconsideration dated January 25, the Court resolved to issue an order directing the COMELEC to revert PGBI's case to the status quo prior to the controversy, meaning that COMELEC was to reinstate PGBI's name in the official list of parties and individuals that could be voted on in the elections. The Court caused the resolution to be served on the COMELEC on the same day, February 2.

On February 3, 2010 the COMELEC noted the Court's status quo order which, if enforced according to it, meant recalling the data base that was then being used in the on-going configuration of the PCOS and CCS machines and the printing of the ballot template. As it happened, Smartmatic-TIM had in fact finished 500 of the 1,674 ballot templates needed for the elections and was about to submit these to the COMELEC on the same day for verification and approval. Such a recall, COMELEC added, would have meant a failure to print 4.8 million ballots on time.

Consequently, on the same day, February 3, 2011, the COMELEC did not lose time to file with the Court an "extremely urgent" motion for reconsideration and to lift status quo order on the ground that, to comply with the order of February 2, would cause havoc to the COMELEC preparation for the forthcoming elections. Further, since the processing of the data base had already begun, undoing what had been accomplished and redoing the whole process in order to include PGBI's name in the national elections would spell disaster in the work of configuring the PCOS and CCS machines, testing and deploying them along with other equipment throughout the islands, checking and sealing the machines, and printing and shipping the ballots. The waves of delays in COMELEC's timelines would have meant possible postponement of the elections at great costs and confusion.

Nearly two months later on April 29, 2010, without resolving the COMELEC's motion for reconsideration, the Court granted PGBI's petition, declared it qualified, and annulled the COMELEC resolutions that excluded it from the 2010 elections. Then, acting on PGBI's manifestation dated April 12, 2010 that the COMELEC had refused to include its name on the list of parties that could be voted on, the Court required COMELEC on May 7, 2010 to explain why it should not be held in contempt for failing to comply with the Court's February 2 status quo order.

The COMELEC submitted its explanation, essentially reiterating what it said in its "extremely urgent" motion for reconsideration and maintaining that it did not intentionally defy the status quo order. The COMELEC added that it was technically, legally, and physically impossible for it to comply with the order in view of the serious operational and financial consequences that such compliance would have entailed. PGBI's position, on the other hand, was that the COMELEC could have complied with the Court's order with no resulting complications if it had wanted to.

The Bottom Line Issue

At bottom, the issue is whether or not it was still in fact feasible for the COMELEC to restore PGBI's name on the final list of party-list candidates without seriously setting back its preparations for the electronic elections and incurring huge costs.

Discussion

Although the matter presents a factual issue, the majority did not regard it necessary to order the reception of

evidence for its resolution. The majority simply rejects the COMELEC explanation, stating that this is belied by the fact that the COMELEC published the final list of candidates on January 30, with notice that any concerned candidate could still call its Law Department to correct "misspelling, omission or other errors" in the published list of candidates within five days of such publication, with the last day falling on February 4.

1. But, clearly, the opportunity provided above was only for "errors" extant on the final list like misspelling (example: listed as "Matias" when the correct spelling is "Mathias"), omission (example: a missing nickname), or other errors (example: interchanging the positions of surname and first name). It may be assumed that such errors do not affect the main configuration of the final list of candidates, thus, permitting last minute corrections.

Here, the insertion of a new name in the fixed, electronically arranged or configured, list of names, said the COMELEC, was not possible without undoing many things that depended on such configuration. Inserting the name of PGBI in that configuration could be the equivalent of trying to sit an extra passenger on a row of seats in a plane - when others have already taken those seats. The settled configuration of the seats in a plane would simply refuse to yield to an extra passenger. PGBI has presented no expert opinion that putting its name in the electronic configuration of the list at such late date was technically feasible without throwing the whole COMELEC timetable into disarray.

2. When the COMELEC published the final list of candidates on January 30, 2010, it served notice that "Should there be misspelling, omission or other errors, the concerned candidate shall call the Law Department's attention within 5 days from this publication for the purpose of correction." Clearly, PGBI could not rely on this notice since the permitted correction was reserved only to "concerned candidates." Having been officially disqualified from running for elections, PGBI cannot be regarded as a concerned candidate covered by the announcement.

3. The COMELEC was not indifferent to the Court's status quo order that was served on it late afternoon of February 2, 2010. On the next day February 3, the COMELEC promptly filed an "extremely urgent" motion for reconsideration and to lift status quo order, pleading for understanding and explaining why complying with the order was operationally and financially impossible. COMELEC acted responsibly and with appropriate deference to the Court.

4. Despite being told of the reasons why the COMELEC could not comply, the Court chose not to deny its motion for reconsideration readily. The Court did not insist that the COMELEC comply with its order come what may. Consequently, since the Court was itself quite unwilling to take responsibility for the dire consequences of such compliance, would it be fair to punish the COMELEC for declining to take on that responsibility? And how can the Court, more than three months later, require the COMELEC to show cause why it should not be punished for disobeying the February 2 status quo order, when the Court did not itself act on the COMELEC's day-after explanation and motion for reconsideration of that order?

5. Finally, PGBI makes no claim that the COMELEC singled it out for exclusion and corrected the list after January 30, 2010 to allow the entry of the names of other party-list candidates similarly situated as PGBI. The COMELEC gave no special favor to anyone. Consequently, it cannot be said that the COMELEC acted iniquitously against PGBI.

In any event, it was not the Court's fault that it issued its status quo order in this case at such a late date. The petition for certiorari that PGBI filed with this Court on December 23, 2009 failed to persuade. Indeed, the Court dismissed it outright on January 12, 2010. PGBI filed its motion for reconsideration only on January 25, 2010 with the result that the Court had the opportunity to take up such motion only on February 2. Still, mistakenly believing that it was not too late, the Court issued its status quo order. The Court cannot visit such mistake upon the COMELEC. It would not be fair.

For the above reasons, I vote to accept the COMELEC's explanation of why is should not be held in contempt satisfactory.

[1] Ang Ladlad LGBT Party v. Commission on Elections, G.R. No. 190582, April 8, 2010.

[2] See . Last visited March 7, 2010.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.